IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-3-2007

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The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1827, 1828 of 2003
W.A.M.P.Nos.2527, 2528 of 2003

1. The Government of Tamil Nadu,
rep.by its Secretary,
Industries Department,
Fort St. George,
Chennai - 600 009.

2. The Industries Commissioner and
Director of Industries and Commerce,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The General Manager,
District Industries Centre,
No.1D, C.V.Naidu Street,
1st Cross Street,
Jaya Nagar,
Tiruvallur ..Appellants 1 to 3 in both writ appeals
(Respondents 1 to 3)

4. Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri,
Thiruvallur Dist. ..4th Appellant in W.A.No.1827/2003
(4th Respondent)

Vs.

1. M/s.Ponneri Steet Industries,
rep.by Sri O.P.Sharma, Partner,
11F Cross Road,
New Washermenpet Road,
Chennai - 600 081.

2. The State Industries Promotion
Corporation of Tamil Nadu Ltd.,
19A Rukmani Lakshmipathy Road,
Egmore,

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Chennai - 600 008. ..Respondents in both writ appeals
Petitioner and 2nd Respondent

These writ appeals have been preferred under Clause 15 of Letters Patent against the common order passed by the learned single Judge in W.P.Nos.17148 and 17149 of 2000 dated 20.3.2003 Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the files of the second responmdent in RS 70537/LC3/99-2 dated 28.10.1999 and the consequential order passed by the 3rd respondent in D. Dis 1525/A1/98 dated 8.11.1999 and direct the 3rd respondent to dispurse the State Capital Subsidy amount of Rs 13,97,000/- already sanctioned in its proceedings in Ref.No.1525/A1/98 dated 18.3.1998 (W.P.No. 17149/00)

(1) writ of Certiorari calling for the records of the file of the 3rd respondent in RC.No. 9833/SI/99, dated 15.5.2000 and auash the same as illegal, arbitration and unreasonable and against the principales of natural justice ;(W.P.No. 17148/00)

For Appellants in both the writ appeals : Mr.P.Subramanian, Government Advocate

For 1st Respondent in both the writ appeals : Mr.D.Trilokchand Chopda

For 2nd Respondent in both the writ appeals : Mr.P.S.Seetharaman

COMMON JUDGMENT

These writ appeals are directed against the common order of the learned single Judge dated 20.3.2003 made in W.P.Nos.17148 and 17149 of 2000, allowing the writ petitions filed by the first respondent herein.

2. For the purpose of convenience, the parties herein would be referred according to their ranks in the writ petitions.

3. In W.P.No.17148 of 2000, the writ petitioner challenged the order of the third respondent dated 15.5.2000, in which the interest free sales tax deferral from 10.7.1997, which was originally granted by the third respondent by communication dated 18.3.1998 was cancelled on the basis of the communication issued by the second respondent dated 28.10.1999 to the writ petitioner.

4. In W.P.No.17149 of 2000, the communication of the second respondent dated 28.10.1999 and the consequential order passed by the third respondent dated 8.11.1999 were sought to be quashed with a direction to the third respondent to disburse the state capital subsidy amount of Rs.13,97,000/-, already sanctioned by the proceedings of the third respondent dated 18.3.1998.

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5. Petitioner is a registered Small Scale Industry, granted registration on 17.8.1981, which was subsequently renewed in the year 1996 and also by certificate dated 29.1.1998. The revised Small Scale Industry (SSI) certificate issued by the second respondent dated 29.1.1998 is in confirmation of the status of the petitioner as Small Scale Industry right from 17.8.1981. The petitioner industry being a SSI, was given State Capital Subsidy in the year 1992 and also Interest Free Sales Tax Deferral facility (IFSTD) as per the proceedings dated 24.6.1992 and for the subsequent years by proceedings dated 28.10.1993.

6. Petitioner made certain expansion in its overall production capacity in the year 1997 and therefore applied to avail IFSTD scheme by application dated 30.7.1997. The third respondent was the competent authority to sanction the deferral payment under the scheme in respect of the SSI as on 30.7.1997. The application was returned by the third respondent on the ground that the petitioner industry crossed Rs.60 lakhs capital outlay and within the outer limit of Rs.3 crores and it has been changed to one of Medium Scale Industry. In the year 1997, the Government of India, in its notification No.S.O.857(E) published in the gazettee on 10.12.1997, which came into force from 11.12.1997, declared that investment limit insofar as the small scale industries are concerned, were increased from Rs.60 lakhs to Rs.3 crores. The same is confirmed by the second respondent in its communication dated 13.1.1998. Thus the industries, which have made capital upto Rs.3 crores were ordered to be continued as SSI Units.

7. According to the scheme, after the expansion within one year, an industry can apply for capital subsidy from the date of commencement of production. Since the outer limit of Rs.3 crores was fixed to enjoy the facilities under the SSI Unit, the first respondent by application dated 2.2.1998 applied for revival of the benefit under the IFSTD scheme by resubmitting the application. The third respondent, who is the competent authority to deal with the petitioner's application, granted the benefit by order dated 18.3.1998 and sanctioned the eligibility certificate for an aggregate amount not exceeding Rs.74,51,500/- interest free from 9 years from 10.7.1997 to 9.7.2006 in terms of G.O.Ms.No.500 Industries Department, dated 14.4.1990. The petitioner was directed to execute the agreement and other documents to avail the benefits.

8. However, the second respondent by proceedings dated 28.10.1999, informed the petitioner that since the unit has crossed the SSI ceiling limit on 10.7.1997, the petitioner should contact the 4th respondent for sanction of subsidy and the third respondent also gave instructions to transfer the files to the 4th respondent and on 8.11.1999, the third respondent forwarded the petitioner's file to the 4th respondent on the ground that the petitioner Unit acquired the status of Medium Scale Industry prior to 10.12.1997 i.e., before the enhancement of the outer limit by the Central Government. The 4th respondent through its communication dated 20.12.1999, called upon the petitioner to furnish the

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details for processing the application and stated that by virtue of the notification of the Government of India enhancing the investment limit upto Rs.3 crores on 10.12.1997, the petitioner Unit continued to remain as SSI unit and therefore the grant of capital subsidy and other benefits under IFSTD scheme should not be interfered with.

9. However, the third respndent by proceeding dated 28.10.1999 cancelled the IFSTD eligibility certificate and therefore the petitioner filed W.P.No.17149 of 2000 by contending that by virtue of the Government of India notification and as per the certificate issued by the third respondent dated 29.1.1998, the petitioner Unit continued to be a small scale industry and therefore the third respondent alone is competent to sanction the facilities under the scheme, which was rightly sanctioned and subsequently cancelled without any notice to the petitioner.

10. The case of the appellants before the learned single Judge was, the investment limit was increased from Rs.60 lakhs to Rs.3 crores by order dated 11.12.1997, the petitioner having submitted application to avail the benefit on 30.7.1997, which was rightly returned and the resubmission of the application on 2.2.1998 was erroneously considered by the third respondent, which was subsequently cancelled and if at all the petitioner is entitled to get any benefit under the scheme, it can approach only the 4th respondent to avail the same and therefore the order passed by the third respondent is valid.

11. The learned single Judge considered the merits of the contentions raised by the rival parties, allowed the writ petition by common order dated 20.3.2003 as against which these writ appeals are filed by the respondents 1 to 3 in writ petitions, contending the very same averments made before the learned single Judge.

12. We have heard the learned Government Advocate appearing for the appellants/respondents as well as the learned counsel appearing for the respective respondents/writ petitioner.

13. It is not in dispute that as per G.O.Ms.No.500 Industries Department, dated 14.4.1990, the petitioner is entitled to avail the benefit. It is also not in dispute that on earlier occasions, the petitioner availed the State Capital Subsidy in the year 1992 and IFSTD by order of the third respondent dated 24.6.1992. It may be true that on the date when the application was submitted by the petitioner on 30.7.1997, the petitioner reached more than Rs.60 lakhs capital outlay and therefore the third respondent may be justified in returning the said application. However, the Government of India, through gazettee notification dated 10.12.1997, having increased the outer limit of the capital outlay to Rs.3 crores and based on the said notification, the petitioner resubmitted the application on 2.2.1998 i.e, within one year permissible period, the third respondent rightly issued eligibility certificate for the grant of benefit under IFSTD Scheme by order dated 18.3.1998.

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14. The only objection raised by the third respondent subsequently is that as on 30.7.1997, petitioner having reached more than Rs.60 lakhs as capital outlay, the 4th respondent alone is competent to give such eligibility certificate. The learned counsel for the petitioner submitted that when the application was forwarded to the 4th respondent, it was returned to the third respondent stating that the petitioner Unit is a SSI Unit as per the certificate issued by the third respondent on 29.1.1998 and the 4th respondent through his proceedings dated 22.4.1999 addressed to the third respondent stating as follows,

"Sir,

Sub: Ponneri Steel Industries - NOC for non-disbursement of subsidy to SIPCOT - Reg.

Ref: Your Lr.Rc.No.1525/A1/98 dt.7.4.99 addressed to M/s.Ponneri Steel Inds.

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With reference to our letter cited, we have to inform that the subject company is a SSI. Hence SIPCOT has not sanctioned/ disbursed state capital subsidy to M/s.Ponneri Steel Inds, in respect of its Unit located at Peravallore Village, Panchetti, Ponneri Taluk.

Yours faithfully,

GENERAL MANAGER(PF)"

Hence it is beyond doubt that the petitioner Unit continued to be treated as SSI Unit only and not as Medium Scale Industry.

15. Yet another factor to be noted is that even for Medium Scale Industries, the subsidy and other benefit is entitled to be given in terms of G.O.Ms.NO.500 Industries Department, dated 14.4.1990 by the Government of Tamil Nadu. Hence the technical objection alone is raised by the appellants in the writ appeals that instead of availing benefit from the third respondent, the petitioner can avail the benefit only from the 4th respondent. The said contention is also not sustainable in view of the stand taken by the 4th respondent dated 22.4.1999, which is extracted above.

16. The learned single Judge taking note of these facts and having regard to the fact that the petitioner industry is a Small Scale Industry as certified by the third respondent, allowed the writ petitions. We find no illegality in the order of the learned single Judge in the light of the above mentioned findings.

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17. We do not find any merit in the writ appeals and the writ appeals are dismissed. The appellants herein/respondents 1 to 3 in the writ petitions are directed to pass appropriate orders within a period of one month from the date of receipt of copy of this order as ordered by the learned single Judge by common order dated 20.3.2003. No costs. Connected miscellaneous petitions are also dismissed.

vr

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1. THE STATE INDUSTRIES PROMOTION
CORPN. OF TAMIL NADU LTD
19A, RUKMANI LAKSHMIPATHY ROAD
EGMORE, CHENNAI -600 008.

2. THE SECRETARY TO GOVT OF
TAMILNADU, INDUSTRIES DEPARTMENT FORT ST GEORGE,CHENNAI.

3. THE INDUSTRIES COMMISSIONER AN
DIRECTOR OF INDUSTRIES AND COMMERCE, EZHILAGAM, CHEPAUK, CHENNAI-5.

4. THE GENERAL MANAGER,
DISTRICT INDUSTIRES CENTRE, NO 1 D. C.V. NAIDU STREET, IST CROSS STREET,
JAYANAGAR, THIRUVALLUR.

5. THE COMMECRICLA TAX OFFICER
PONNERI ASSESSMENT CIRCLE, PONNERI, THIRUVALLUR.
+ ONE CC TO GOVT PLEADER SSR. 15547'
+ ONE CC TO MR. T. PRAMODKUMAR CHOPDA, ADVOCATE SR. 15830
bv (CO)
SG 20/3/07

COmmon Judgment in

W.A.Nos.1827 & 1828 of 2003

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